

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Gregory G. Tockstein as Guardian of Rhonda Tockstein, a disabled adult and Gregory G. Tockstein, individually

(b) County of Residence of First Listed Plaintiff **Monroe**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joseph A. Bartholomew, Cook, Ysursa, Bartholomew, Brauer & Shevlin, LLP, 12 W. Lincoln St., Belleville, IL 62220. 618-235-3500

DEFENDANTS

United States of America

County of Residence of First Listed Defendant **Randolph**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 Section 1331(b), 2671 et seq.

Brief description of cause:
Medical malpractice claim

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
\$20,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE **3-19-19**

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPOINTING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

GREGORY G. TOCKSTEIN as Guardian)	
of Rhonda Tockstein, a)	
disabled adult and GREG C.)	
TOCKSTEIN, Individually,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

JURISDICTION

Jurisdiction of this Court is conferred by the Federal Tort Claims Act, Act of August 2, 1946, 60 Stat. 843; USC, Title 28, Section 1331(b), 2671 et seq., as the Plaintiff is a private citizen and the Defendant is the United State of America and the actions herein occurred in the Southern District of Illinois.

COMPLAINT

COUNT I

Comes now the Plaintiff, GREGORY G. TOCKSTEIN, as Guardian of Rhonda Tockstein, a disabled adult, by and through his attorneys, COOK, BARTHOLOMEW, SHEVLIN & COOK, LLP, and JOSEPH A. BARTHOLOMEW, and for Count I of his Complaint against the Defendant, UNITED STATES OF AMERICA, states as follows:

1. That the Plaintiff, Gregory G. Tockstein, Guardian of Rhonda Tockstein, a disabled adult, is a citizen of the United State of America and resident of Randolph County, Southern District

of Illinois.

2. That the disabled adult, Rhonda Tockstein, is a citizen of the United State of America and resident of Randolph County, Southern District of Illinois.

3. That on or about October 3, 2016, the disabled adult, Rhonda Tockstein, presented to Dr. David Walls for medical treatment.

4. That at all times mentioned herein the Defendant, United State of America, was the employer of physicians and other medical personnel at the medical facility at the offices of Dr. David Walls, was responsible for rendering medical care and treatment to the disabled adult, Rhonda Tockstein.

5. That at said time and place the Defendant, the United State government, by and through its agents, servants and employees, and Dr. David Walls, failed to apply the knowledge and use the skill and care ordinarily used by a reasonably well-qualified health care provider and therefore was professionally negligent in the following manner:

- (a) negligently and carelessly prescribed Lexapro, an antidepressant which can lower the seizure threshold and;
- (b) negligently and carelessly concomitantly discontinued the Valproic acid which is an anticonvulsant.

6. That as the direct and proximate result of one or more of the foregoing negligent acts or omissions on the part of the defendant, Rhonda Tockstein was caused to have increased seizure activity and severe permanent brain injury and suffers injury to

her body as a whole; she has sustained constant pain and suffering; loss of enjoyment of a normal life, Plaintiff has incurred and will become liable to pay great sums of money for medical and hospital treatment, and will become liable for additional sums in the future, Plaintiff has lost and in the future will continue to lose large sums of money from an impairment to her earning capacity; and will incur life care expenses, all to her damage in a substantial amount.

7. That the Plaintiff has exhausted his administrative remedies in this action having filed a form 95, pursuant to the Federal Tort Claims Act, with the Department of the United States Air Force, said claim having been on file since July 19, 2018 and more than six months has expired and therefore Plaintiff has filed this action pursuant to the provisions of 28 USCA 2401(b).

8. That the Plaintiff, Gregory G. Tockstein, has been named Guardian of Rhonda Tockstein, a disabled adult pursuant to Order of the Court.

WHEREFORE, the Plaintiff, GREGORY G. TOCKSTEIN, as Guardian of Rhonda Tockstein, a disabled adult, prays judgment against the Defendant, UNITED STATES OF AMERICA, in an amount of TWENTY MILLION DOLLARS (\$20,000,000.00) plus costs herein expended, and for such other and further relief as this Court deems proper.

S/Joseph A. Bartholomew
JOSEPH A. BARTHOLOMEW
Attorney for Plaintiff
IL REG #6187925
FED #6519

COOK, BARTHOLOMEW, SHEVLIN & COOK, LLP
12 West Lincoln Street
Belleville, Illinois 62220
(618) 235-3500

COUNT II

Comes now the Plaintiff, GREGORY G. TOCKSTEIN, Individually, by and through his attorneys, COOK, BARTHOLOMEW, SHEVLIN & COOK, LLP, and JOSEPH A. BARTHOLOMEW, and for Count II of his Complaint against the Defendant, UNITED STATES OF AMERICA, states as follows:

1. That the Plaintiff, Gregory G. Tockstein, is a citizen of the United State of America and resident of Randolph County, Southern District of Illinois.

2. That the disabled adult, Rhonda Tockstein, is a citizen of the United State of America and resident of Randolph County, Southern District of Illinois.

3. That on or about October 3, 2016, the disabled adult, Rhonda Tockstein, presented to Dr. David Walls for medical treatment.

4. That at all times mentioned herein the Defendant, United State of America, was the employer of physicians and other medical personnel at the medical facility at the offices of Dr. David Walls, was responsible for rendering medical care and treatment to the disabled adult, Rhonda Tockstein.

5. That at said time and place the Defendant, the United State government, by and through its agents, servants and employees, and Dr. David Walls, failed to apply the knowledge and

use the skill and care ordinarily used by a reasonably well-qualified health care provider and therefore was professionally negligent in the following manner:

- (a) negligently and carelessly prescribed Lexapro, an antidepressant which can lower the seizure threshold and;
- (b) negligently and carelessly concomitantly discontinued the Valproic acid which is an anticonvulsant.

6. That as the direct and proximate result of one or more of the foregoing negligent acts or omissions on the part of the defendant, Rhonda Tockstein was caused to have increased seizure activity and severe permanent brain injury and suffers injury to her body as a whole; she has sustained constant pain and suffering; loss of enjoyment of a normal life, and Plaintiff Gregory G. Tockstein, suffers loss of consortium due to his wife's injuries.

7. That the Plaintiff has exhausted his administrative remedies in this action having filed a form 95, pursuant to the Federal Tort Claims Act, with the Department of the United States Air Force, said claim having been on file since July 19, 2018 and more than six months has expired and therefore Plaintiff has filed this action pursuant to the provisions of 28 USCA 2401(b).

8. That the Plaintiff, Gregory G. Tockstein, has been named Guardian of Rhonda Tockstein, a disabled adult pursuant to Order of the Court.

WHEREFORE, the Plaintiff, GREGORY G. TOCKSTEIN, Individually, a disabled adult, prays judgment against the Defendant, UNITED STATES OF AMERICA, in an amount of TWENTY MILLION DOLLARS (\$20,000,000.00) plus costs herein expended, and for such other and further relief as this Court deems proper.

S/Joseph A. Bartholomew
JOSEPH A. BARTHOLOMEW
Attorney for Plaintiff
IL REG #6187925
FED #6519

COOK, BARTHOLOMEW, SHEVLIN & COOK, LLP
12 West Lincoln Street
Belleville, Illinois 62220
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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

GREGORY G. TOCKSTEIN as Guardian)	
of Rhonda Tockstein, a)	
disabled adult and GREG C.)	
TOCKSTEIN, Individually,)	
)	
Plaintiff,)	
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vs.)	No.
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

A F F I D A V I T

JOSEPH A. BARTHOLOMEW, being duly sworn upon his oath and pursuant to the Provisions of 735 ILCS 5/2-622, deposes and states as follows:

1. That the affiant has consulted and reviewed the facts of the case with a health professional who the affiant reasonably believes is knowledgeable in the relevant issues involved in the particular action and has practiced within the last six years in the same area of medicine that is at issue in this particular action and who is qualified by experience in the subject of this case.

2. That the reviewing health professional has determined in a written report, after review of the medical records and other relevant materials involved in the particular action that there is a reasonable and meritorious cause for filing such an action.

3. That affiant has concluded on the basis of the reviewing health professional's review and consultation, that there is a

reasonable and meritorious cause for filing the above-styled action against the United States of America.

4. That the reviewing healthcare professional is Board Certified.

5. That a copy of the Certificate of Merit is attached hereto and incorporated herein by reference.

6. That this case has never before been filed.



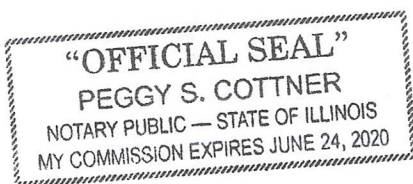
JOSEPH A. BARTHOLOMEW
IL BAR# 6187925
FED 6519

SUBSCRIBED AND SWORN, to before me, a Notary Public, this
19th day of March, 2019.



NOTARY PUBLIC

My Commission Expires:



Certificate of Merit

June 13, 2018

Re: Rhonda Tockstein

I am a board-certified physician licensed to practice medicine in all its branches. I have an active medical license and I practice and have practiced medicine within the previous six (6) years. I am knowledgeable concerning the areas of medicine in this particular action by experience, background, training, education and continuing medical education to comment on the issues presented by this case. I have reviewed the pertinent medical documents concerning the care and treatment of Rhonda Tockstein. Based on the information reviewed and considered it is my opinion that there is a reasonable and meritorious basis for an action against Southern Illinois Healthcare Foundation. On September 2, 2016 Southern Illinois Healthcare Foundation (by and through its agents, servants and employees) deviated from the acceptable standards of medical practice by (1) prescribing Lexapro, an antidepressant which can lower the seizure threshold and (2) concomitantly discontinuing the Valproic acid, which is an anticonvulsant. Those deviations from the standards of medical practice caused, or significantly contributed to cause, a seizure, which resulted in significant brain damage.